

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DAVID FERNANDEZ

Plaintiff,

V.

ALLEY E. DONALD, III,
SMITH TRANSPORT, INC.,
JOHN DOES 1-10, and ABC CORP, 1-10,

Defendants

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:
: DOCKET NO.:

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY:

Defendant, Smith Transport, Inc., by and through its attorneys, Rawle & Henderson LLP, respectfully avers upon information and belief as follows:

1. Plaintiff, David Fernandez filed a Complaint in the Superior Court of New Jersey Law Division of Essex County, under Docket No. ESX-L-00693-20 against, *inter alia*, Smith Transport on October 7, 2020. *See* Plaintiff’s Summons and Complaint, attached hereto as Exhibit “A.”
2. Plaintiff obtained the Summons on or about October 21, 2020. *See id.*

3. Plaintiff alleges that on or about December 19, 2018, he was the operator of a motor vehicle on Route 3 westbound in Secaucus, New Jersey. *See id.* at ¶ 1.

4. Plaintiff alleges he was in a motor vehicle accident with Donald E. Alley, III (improperly identified as Alley E. David, III) and Smith Transport, Inc.

5. In particular, plaintiff alleges the following:

4. As a direct and proximate result of the aforesaid carelessness, negligence and recklessness of the defendants, ALLEY E. DONALD, III, SMITH TRANSPORT, INC., JOHN DOES 1-10 AND ABC CORP. 1-10 (a series of fictitious names describing other employees/drivers, operators/owners, lesser/lessees, agents, employers or persons/entities who benefitted from the operation of defendant's tractor trailer at the time of the within accident and those who continuing investigation shall reveal), the plaintiff, DAVID FERNANDEZ, was violently tossed about, sustained injuries causing permanent disability, permanent significant disfigurement, permanent loss of bodily function, lost time from work and suffer an impairment in earning capacity, has incurred or in the future will incur expenses for the treatment of said injuries in excess of the applicable threshold, has been disabled and will in the future be disabled and not able to perform his usual functions, has been caused and in the future will be caused great pain and suffering, has been deprived and in the future will be deprived of her[sic] right to the enjoyment of life.

See Exhibit "A" at ¶ 4.

6. Based upon a fair reading of the Complaint plaintiff has set forth a claim in which an amount in excess of the jurisdictional limit of \$75,000, exclusive of interest and costs, may be at stake.

7. Upon information and belief, defendant, Donald E. Alley, III (improperly identified as Alley E. Donald, III) was and is a resident of Pembroke, New Hampshire, and therefore, is a citizen of the State of New Hampshire.

8. Defendant, Smith Transport, Inc. is corporation incorporated in the Commonwealth of Pennsylvania and with a principle place of business in the Commonwealth of Pennsylvania.

9. Based on the above, Smith Transport, Inc. is a citizen of Pennsylvania.

10. Upon information and belief, plaintiff, David Fernandez, was and is a resident of Belleville, New Jersey, and therefore, is a citizen of the State of New Jersey. *See* Exhibit “A.”

11. Diversity of citizenship within the meaning of 28 U.S.C. §1332, exists between plaintiffs and defendant since:

- (a) Plaintiff is a citizen of the State of New Jersey; and
- (b) Defendants are not citizens of the State of New Jersey.

12. Furthermore, diversity of citizenship existed at the time the Complaint was filed and continues through the time of filing of this notice, such that defendant is entitled to removal pursuant to 28 U.S.C. §1441, as amended, and 28 U.S.C. §1446.

13. Upon information and belief, Donald E. Alley, III has not yet been served.

WHEREFORE, defendant, Smith Transport, Inc., prays that the above-captioned action now pending in the Superior Court of New Jersey in the County of Essex be removed therefrom to this Honorable Court.

RAWLE & HENDERSON LLP



By: _____

Gary N. Stewart
Diane B. Carvell
Attorneys for Defendant
Smith Transport, Inc.
401 Route 73 North, Suite 200
40 Lake Center Executive Park
Marlton, NJ 08053
Telephone: (856) 596-4800
gstewart@rawle.com
dcarvell@rawle.com
File No.: 720,080

Dated: November 20, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within-captioned Notice of Removal was served via first class mail, postage prepaid, on the following:

Kenneth W. Elwood, Esquire
Blume, Forte, Fried, Zerres & Molinari, P.C.
One Main Street
Chatham, NY 07928
Counsel for Plaintiff

RAWLE & HENDERSON, LLP



By: _____

Gary N. Stewart, Esquire
Diane B. Carvell, Esquire
Attorney for Defendant,
Smith Transport, Inc.

DATED: November 20, 2020